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Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the Accused to the Victim?

PAVITHRA V.¹ AND RIKTHA MURALIDHAR²

ABSTRACT

“For too long, the law has centered its attention more on the rights of the criminal than on the victims of the crime. It is high time we reversed this trend and put the highest priority on the victims and the potential victims.” - Gerald R. Ford

The criminal justice system is an instrument of social control used to prevent, deter and control crime and to punish criminals. A criminal act is considered an attack on humanity and social order.

The Indian criminal system is built around the age-old principles of “Let Hundred Guilty Be Acquitted but One Innocent Should Not Be Convicted.” and “innocent until proven guilty”. Throughout the years, the legislators have reformed and developed various rights, safeguards and mechanisms for criminals, to reform and rehabilitate them back into society.

But the most affected party of the crime, the victims, have been neglected. Is imprisoning the criminals enough? Does that provide any real, substantial relief to the victim?

A lot of the time, no proper support or assistance is given to the victims. They have minimal rights and safeguards. Their rights have been discussed in many law reports like the 154th Law Commission report and the Malimath Committee report but how successful have they been?

Section 357A of the CrPC, 1973, provides for victims compensation scheme which was inserted in 2009 by the Code of Criminal Procedure Amendment Act, 2008. A proviso to section 372 was inserted by the same act, giving victims the right to appeal. These amendments are a positive step towards victims rights but is this progress enough? How far have we come on the path from Retribution to Rehabilitation?

¹ Author is a student at School of Excellence in Law, the TamilNadu Dr. Ambedkar Law University, India.

² Author is a student at School of Excellence in Law, the TamilNadu Dr. Ambedkar Law University, India.

I. INTRODUCTION

Crime, by definition, is an act or wrongdoing against not just an individual, but to society & mankind as a whole. It is considered an assault against humanity itself, which is why the State is the one that initiates action against the accused.

However, crimes don't just cause symbolic harm to the society & social order, they also cause substantial harm to people.³

The concept of the whole of humanity as the victim overshadows and diminishes the importance of the actual victims of crime. They are reduced to nothing but a mute spectator, as they watch the court proceedings between the State and the accused from the sidelines.

They cannot ensure proper investigation of the offence, cannot oppose bail of the accused, many don't even have access to proper legal aid to fight their case.

The Indian Justice system is based around the criminal, how he must be punished, when, where etc... The accused always gets the benefit of doubt, despite being the one who disrupted the supposed 'social order'.

The compensation, representation and assistance of victims- the ones who have to live with the consequences of the crime, is merely an afterthought. They have always been the "forgotten people in the system".

Who is a victim?

In India, the term "victim" is defined in **Section 2(wa)** of the Criminal Procedure Code, 1973.⁴ In simple terms, it means a person who suffers any loss or injury as a result of a crime. It does include his or her guardian or legal heir, but is usually used in the context of the person whose suffering is a direct or proximate result of the crime.

II. RIGHTS OF A VICTIM

The pro-victim movement was kick-started in 1985, when the UN adopted a Declaration of **The Basic Principles of Justice for The Victims of Crime and Abuse of Power**,⁵ which was ratified by many countries including India. This declaration gave a comprehensive definition

³ Law commission of india, *Code of Criminal Procedure, 1973*, report no 154, (august 1996) <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf> (last visited on march 6th, 2021)

⁴ Criminal Procedure (Amendment) Act, 2008.

⁵ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34*, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> [last visited on March 6th, 2021]

of 'victim' and the importance of their rights was recognised globally.

It made people realise that though many efforts have been made to understand the psyche of the criminals through Criminology, the victims were often the neglected one/overlooked.

The preamble of the Statute of Council of Europe says, "it must be a fundamental function of criminal justice to meet the needs and to safeguard the interest of the victim".

They must have certain basic rights, which are as follows:

1. Right to be heard.
2. Right to be notified or informed of their various legal rights.
3. Right to be notified of the events & proceedings in the Criminal Justice Process.
4. Right to protection during the criminal justice process. This can be Police escorts to and from court, witness protection programs, residence relocation etc...
5. Right to speedy Trial
6. Right to be treated fairly, with respect and dignity
7. Right to file appeal (under proviso to section 372 of CrPC)

These rights are the basic minimum required for enabling the victim to restore their life back to normal, by making the aftermath of the crime a little bit easier to deal with.

But the question is whether these rights are properly enforced.

III. REHABILITATION

In **the 154th law commission report**,⁶ it was observed that "crimes often entail substantial harm to people and not merely symbolic harm to society. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime."

Rehabilitation of victims of crime is of utmost importance as it is for reformation of criminals. Victims of crime suffer from trauma, stress, injury to dignity & respect, loss of livelihood, etc. The system needs to provide proper care, support and assistance to rehabilitate them back into normal life. The victims should be treated with care, respect and dignity.

Victims should be given proper health care for their physical injuries, mental health care for the trauma, stress etc caused, community assistance to help them overcome difficulties faced due to the crime and finally compensation for the damages caused by the crime.

⁶ Law Commission of India, *Code of Criminal Procedure, 1973*, report no 154, (august 1996) <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf> (last visited on march 6th, 2021)

Rehabilitating a victim is as important as punishing the accused. Victim's plight cannot be ignored even when a crime goes unpunished for lack of adequate evidence.⁷

In **Olga Tellis vs. Bombay Municipal Corporation**⁸, the court observed that the right to Life under Article 21 can be jeopardized by violation of right to livelihood.

One of the main and effective ways to rehabilitate victims of crime is to provide pecuniary compensation to them. We will see the measures taken by the legislation to ensure victim compensation below.

IV. GOVERNMENTAL MEASURES FOR VICTIM COMPENSATION

The 154th Law Commission Report on the CrPC devoted an entire chapter to 'Victimology' in which the emphasis on victim's rights in criminal trials was discussed. It interpreted Article 41 (containing right to public assistance in certain cases) and Article 51-A (duty of every citizen to develop humanism and the spirit of inquiry and reform) to form the constitutional foundation of Victimology. It also suggested that the compensation should not just be limited to only fines, penalties & forfeitures realized.⁹

In 2003, **the Malimath Committee** on reforms in the Criminal Justice System of India, was of the opinion that the strategies being introduced in the United Kingdom to give a better deal for victims should be considered for adoption in India. It stated that Victim compensation is a state obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted.¹⁰

In its report, it recommended the creation of a victim compensation fund to be administered by the Legal Services Authority. This led to the introduction of Section 357A of the Code of Criminal Procedure, which was a revolutionary step towards victim rehabilitation for the Indian Criminal Justice system.

Victim Compensation Scheme is available under **Section 357A** of Code of Criminal Procedure. Under this section, the victim can request the State or District Legal Service Authority to award him or his dependents compensation, for the loss or injury caused to him by the offender or for rehabilitation.

⁷ Manohar Singh v. State of Rajasthan (2015) 3 SCC 449; AIR 2015 sc 1124

⁸ 1986 AIR 180, 1985 SCR Supl. (2) 51

⁹ Law Commission of India, *Code of Criminal Procedure, 1973*, report no 154, (august 1996) <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf> (last visited on march 6th, 2021)

¹⁰ JUSTICE V.S. MALIMATH COMMITTEE, *Report of the Committee on Reforms of Criminal Justice System, (MARCH 2003)*, [http://mja.gov.in/Site/Upload/GR/Title%20NO.81\(As%20Per%20Workshop%20List%20title%20no81%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.81(As%20Per%20Workshop%20List%20title%20no81%20pdf).pdf)

Tamil Nadu Victim compensation scheme- The Tamil Nadu Victim Compensation Scheme, 2013 was created under the power given by the above mentioned provision. As per the National Services Authority Statistical Information in r/o Victim Compensation scheme, 2,15,31,48,146 rupees was awarded as compensation in 2019-2020. But there are 11,761 applications still pending.

The courts have also, in many occasions, used the **golden triangle of fundamental rights (Articles 14, 19 & 21)** in combination with the **proviso to Section 372 of CrPC** to provide victim compensation.

In **Ram Phal vs State And Ors., the court observed that**¹¹, “at present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.”

V. FLAWS IN THE SYSTEM

For a victim of crime, the primary goal is to put the traumatic event behind him and move forward with his life. Seems obvious, but the criminal justice system is so flawed that it can be difficult, sometimes impossible to do so.

The Preamble of the **Statute of Council of Europe** highlights the importance of encouraging the cooperation of the victim and enhancing their confidence in the criminal justice system.¹²

The Malimath Committee report, 2003 on reforms in the Criminal Justice System of India, observed that the lack of legal rights and protection for victims tends to result in their disinterestedness in the criminal proceedings.¹³

Indian Criminal Justice System falls short in many ways when it comes to protecting victim rights. Some of the many flaws are highlighted below:

The principle of ‘delayed justice is denied justice’ is well established and forms the basis for the right of speedy and expeditious trial. But that is not the case in India. There is a huge backlog of cases in the courts and it takes years to get any sort of relief or justice for the victims or their families.

The system awards the accused ample opportunities to justify his actions, dragging the case on

¹¹ 2015 SCC OnLine Del 9802

¹² Law Commission of India, *Code of Criminal Procedure, 1973*, report no 154, (august 1996) <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf> (last visited on march 6th, 2021)

¹³ JUSTICE V.S. MALIMATH COMMITTEE, *Report of the Committee on Reforms of Criminal Justice System, (MARCH 2003)*, [http://mja.gov.in/Site/Upload/GR/Title%20NO.81\(As%20Per%20Workshop%20List%20title%20no81%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.81(As%20Per%20Workshop%20List%20title%20no81%20pdf).pdf)

for years, denying the victim the right to get expeditious justice and adding to the overflowing number of pending cases.

The united nations Declaration of **The Basic Principles of Justice for The Victims of Crime and Abuse of Power**, states the following,

“5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redressal through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”¹⁴

In **State of rajasthan vs. Manohar Singh¹⁵**, a jail term could not be awarded to the accused because 35 years had already gone by since the incident, but the court ordered compensation to be provided by the accused or the state to the victim.

The court held that, *“In spite of legislative changes and decisions of this court, this aspect (victims’ rehabilitation) at times escapes attention. The court has to give attention not only to the nature of crime, prescribed sentences, mitigating and aggravating circumstances to strike just balance in the needs of society and fairness to the accused, but also to keep in mind the need to give justice to the victim of crime.... We find that the court of sessions and the high court have not fully focused on the need to compensate the victim which can now be taken to be integral to just sentencing,”* the bench added.

The victim and their family should have moved on by the time the judgement was actually given. What about the 35 years that were lost? The victim and her family had to relive the trauma & stress of the incident over and over again for over 3 decades.

Another flaw in the system would be lack of training and sensitisation of officers, judges and authorities dealing with victims.

They are given extensive training on how to deal with the accused but very minimal attention is given to how victims of crime and their families must be dealt with.

The United Nations Declaration of **The Basic Principles of Justice for The Victims of Crime and Abuse of Power**, states the following, *“16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims,*

¹⁴ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34*, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> [last visited on March 6th, 2021]

¹⁵ AIR 2015 SC 1124

and guidelines to ensure proper and prompt aid. ”¹⁶

In a recent supreme court proceedings the judge asked the man accused with raping a minor girl, whether he will marry her.¹⁷ The same court has discouraged this practice heavily in ***Shimbu & Anr vs State Of Haryana***.¹⁸ How would the victim have confidence in the justice system if it is so inconsistent and unpredictable?

Another flaw in the system is the lack of proper assistance and support mechanisms for victims of crime. Victims should be provided with proper and necessary health care facilities for both mental and physical injuries caused to them. They should be given both financial as well as social assistance to overcome their difficulties and problems. They should also be informed about the availability of such services and assistance.

The United Nations Declaration of **The Basic Principles of Justice for The Victims of Crime and Abuse of Power**, states the following,

“14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.” ¹⁹

VI. CONCLUSION

The Indian Justice system has always been centered around the accused. Their rights, safeguards and rules for imprisonment are constantly evolving with the changing times. However, the rights and rehabilitation of the victim, the one who has to live with the consequences of the crime, have been grossly overlooked.

The victims must be treated with compassion & dignity... as humans, rather than just another case.

Like the **Statute of Europe** recommended, the questioning of the victim must be with due consideration to his personal situation, rights and dignity.²⁰ Police officers and other law

¹⁶ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> [last visited on March 6th, 2021]

¹⁷ *'Will You Marry Her?': SC Asks Man Accused of Raping Woman When She Was Minor*, THE WIRE,(march 1st , 2021) <https://thewire.in/law/supreme-court-rape-accused-marry-pocso-government-employee>(last visited on march 6th, 2021)

¹⁸ AIR2014 SC 739

¹⁹ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly*, 29 November 1985, A/RES/40/34, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> [last visited on March 6th, 2021]

²⁰ Law commission of india, *Code of Criminal Procedure, 1973*, report no 154, (August 1996) <http://lawcommission>

enforcement personnel should be trained to deal with victims in a sympathetic and reassuring manner, just like they are taught to handle criminals.

The victim compensation shouldn't just be financial. They must receive psychiatric and medical help, protection against secondary victimization and moral & social support to enable them to continue living in society and to ensure that their life isn't defined by the crime.

Clear rules and guidelines must be set to ensure that the victims are informed of their rights in seeking redressal, especially victims that are illiterate.

The focus of the Indian Justice system needs to shift from punishing the accused to protecting the victim's rights. Their representation, compensation and assistance needs to be a priority.

Imposition of harsh prison sentences on the criminal is not enough. Reparative actions also need to evolve with time to lessen the victim's injuries and losses as new crimes come to light.

Although victimology has been recognised and attempted to be implemented into the Indian Criminal Justice System, we still have a long way to go on the path from Retribution to Rehabilitation.
